



Implementation of the Environmental Advisory Rules Committee's (ARC) Recommendations

Remediation & Redevelopment Division

April 2013

Recommendations R-1: Groundwater/Surface Water Interface (GSI) (COMPLETED)

The DEQ convened key stakeholders for a Collaborative Stakeholders Initiative (CSI) to address long-standing issues associated with Michigan's cleanup and redevelopment programs. Please go to the "[Michigan's Cleanup and Redevelopment CSI](#)" Web site. Go to www.michigan.gov/deqland, select "Land Cleanup," "Site Investigation and Cleanup," and then "Michigan's Cleanup and Redevelopment CSI."

The CSI GSI Group was responsible for the passage of 2012 PA 190 (Act 190) that amended Section 20120e (MCL 324.20120e) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The legislative changes became effective on June 20, 2012, and create flexibility in allowing for more progressive options in addressing groundwater venting to surface water including mixing zones, alternative monitoring points, and ecological and/or modeling demonstrations.

The GSI Technical and Program Support (TAPS) Team will be developing a DEQ Policy and Procedure that assists staff in understanding the legislative changes and the addressing the technical aspects of Act 190 that are used for demonstrating compliance and/or the necessity for taking remedial action.

On December 22, 2012, Governor Snyder signed SB 1328 into law (2012 PA 446). Act 446 amended Part 213, Leaking Underground Storage Tanks, of the NREPA and provides for the option of using Part 201, in lieu of Part 213, for evaluation and corrective actions related to the venting groundwater pathway (GSI).

In addition, the Remediation Redevelopment Division (RRD) has provided for additional staff funding in the Water Resources Division (WRD) for GSI assistance and collaboration. This action will provide for a more timely and coordinated review for GSI.

The WRD and CSI GSI Group finalized DEQ Policy and Procedure No. 09-014 that now allows for the use of U.S. Environmental Protection Agency (USEPA) Method 245.1 to quantify the level of mercury in groundwater that is venting to surface water as part of an evaluation of the GSI pathway. This significantly improves the GSI mercury compliance process.

Recommendation R-2: Part 201/213 Vapor Intrusion Policy and Procedure

The Part 201/213 Vapor Intrusion Policy and Procedure was revised and updated to include comments provided by stakeholders during the May 1 to August 1, 2013 comment period. All 180 comments were tabulated and a brief discussion on which were incorporated into the document and why was completed. The policy was presented to the Office of Waste Management and Radiological Protection's Remediation Advisory Team (RAT) and they gave their approval of the policy. The policy is currently under review by senior management and is expected to be completed soon. Following approval by senior management, the Department vapor intrusion policy and procedure will be finalized and signed.

by Director Wyant and posted to the [DEQ Policy and Procedures](#) web site. A notice will be sent out on the DEQ list serve notifying interested parties of the newly finalized document.

Recommendation R-3: Revising Part 201 Cleanup Criteria

On December 14, 2010, Governor Granholm signed legislation that amended Part 201 to, among other things, require the DEQ to evaluate and revise the cleanup criteria within 2 years after the effective date of the amendatory legislation. In addition, Recommendation R-3 proposes to revise the Part 201 cleanup criteria. Further work is necessary to reach consensus on revisions to the cleanup criteria. Accordingly, on December 22, 2012, Governor Snyder signed SB 1328 into law (2012 PA 446). Act 446 amended Part 201 by extending the deadline for revision of cleanup criteria rules from December 31, 2012 to December 31, 2013.

The process of putting the Part 201 Cleanup Criteria workgroup together is in progress. It is anticipated that the workgroup will include members of the Collaborative Stakeholder Initiative (CSI) group and will be expanded to include some health practitioners whose expertise was requested in the pathway analysis process. The DEQ toxicology unit drafted a set of rules this past quarter as a starting point for discussion.

Recommendation R-4: Part 201 Rules (COMPLETED)

Recommendation R-4 proposes to rescind all rules promulgated under Part 201 except the portion of the Part 7 rules related to establishing generic cleanup criteria and screening levels. Concurrent with this process, Recommendation R-4 stated that the DEQ should promulgate a streamlined and efficient rule package that contains only rules that are necessary for program implementation and performance-based rather than prescriptive.

Act 446 amended Part 201 by rescinding 32 rules in total, upon the effective date of the Act which is December 31, 2012. Below is a summary of rules rescinded.

- Part 1. General Provisions (portions of)
- Part 4. Alternative Water Supplies (all)
- Part 5. Response Activities (portions of)
- Part 7. Clean-Up Criteria (portions of)
- Part 9. Baseline Environmental Assessment (all)

Additional Part 1, 5, and 7 rules, 35 in total, will be rescinded on December 31, 2013.

During the CSI process, an effort was made to incorporate the critical rule language into statute to eliminate the need for rules. This was intended to streamline the process further and complete the process sooner. As of today, there are no efforts being undertaken to promulgate rules other than for the criteria. Therefore, this recommendation has been completed.

Recommendation R-5: Risk-Based Closures and Site Specific Criteria (COMPLETED)

Act 446 amended Part 201 by broadening the use of site-specific criteria to include non-numeric criteria, in addition to numeric criteria, in evaluating the toxicity and exposure risk for sites. Site-specific criteria may be used in a response activity if it can be demonstrated that this criteria better reflects the best available information related to that substance and site conditions.

The Part 213 statutory amendments enacted May 2012 have updated the criteria associated with “free phase” employing current science and the best national practices, and increased regulatory flexibility in managing risk.

The amendments have eliminated the definition of “free product” as being 1/8 inch accumulation of petroleum in monitor wells and instituted the use of the term light nonaqueous-phase liquid (LNAPL) to describe liquids containing one or more compounds that are immiscible or sparingly soluble in water. Additional definitions were also added to the amendments to describe the conditions under which LNAPL may exist at sites including “residual NAPL,” “mobile NAPL,” and “migrating NAPL,” which have become new criteria by which the DEQ will be evaluating “free phase” situations as required in the ORR recommendation.

The amendments have adopted the nationally recognized American Society for Testing and Materials (ASTM) Risk-based Corrective Action for characterizing and assessing risk associated with the sites where LNAPL is present which allows for greater flexibility in managing risks associated with its presence.

In addition to the statutory amendments redefining NAPL, using nationally recognized standards, and allowing for greater flexibility in managing risks associated with NAPL, the DEQ has adopted the nationally recognized and adopted Interstate Technology and Regulatory Council’s (ITRC) evaluative and management practices for LNAPL sites.

The RRD is also working on policy and procedures related to NAPL definitions and NAPL management.

Recommendation R-6: Effective Solubility and Free Phase Contamination

The Part 213 statutory amendments enacted May 2012 have updated the criteria associated with “free phase” employing current science and the best national practices, and increased regulatory flexibility in managing risk.

The amendments have eliminated the definition of “free product” as being 1/8 inch accumulation of petroleum in monitor wells and instituted the use of the term light nonaqueous-phase liquid (LNAPL) to describe liquids containing one or more compounds that are immiscible or sparingly soluble in water. Additional definitions were also added to the amendments to describe the conditions under which LNAPL may exist at sites including “residual NAPL,” “mobile NAPL,” and “migrating NAPL,” which have become new criteria by which the DEQ will be evaluating “free phase” situations as required in the ORR recommendation.

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In addition to the statutory amendments redefining NAPL, using nationally recognized standards, and allowing for greater flexibility in managing risks associated with NAPL, the DEQ has adopted the nationally recognized and adopted Interstate Technology and Regulatory Council’s (ITRC) evaluative and management practices for LNAPL sites.

The RRD is working on policy and procedures that will address NAPL definitions and NAPL management.

The Nonaqueous-Phase Liquid (NAPL) Management Policy and Procedure has been drafted and reviewed by the CSI stakeholder group. It is being prepared for internal review and will then be advertised via the DEQ list serve and posted on the DEQ web site for comment by the stakeholders. Once the policy and procedure is completed, this recommendation will be considered complete.

Recommendation R-7: Storage Tanks (COMPLETED)

One of the requirements in each of the below recommendations is moving the DEQ storage tank program to the Department of Licensing and Regulatory Affairs (LARA). On October 3, 2012, Governor Rick Snyder issued [Executive Order 2012-14](#) which transfers the Aboveground Storage Tank Program and the Underground Storage Tank Program from the DEQ to the Bureau of Fire Services, within LARA. The regulation of leaking underground storage tanks will remain with the DEQ and the Bureau of Fire Services will work cooperatively with the DEQ in identifying leaking storage tanks. LARA will be responsible for completing the rule changes identified in recommendations above, as well as rescind the Transportation of Flammable and Combustible Liquids rules per Recommendation R-7c. The provisions of the Executive Order become effective on December 4, 2012.

If the Michigan amendments are removed from the rules stated above, the proposed amendments to the Part 5 – Spillage of Oil and Polluting Materials rules (R 324.2001 – R 324.2009) will need to address storage tank releases. Additional proposed amendments to the Part 5 rules are found in Recommendation W-1.

LARA, therefore, will be responsible for addressing the following five Environmental ARC recommendations pertaining to tank rule revisions:

- **R-7b** – Part 211 – Underground Storage Tank (UST) Rules: amend rules to incorporate federal standards.
- **R-7d** – Compressed Natural Gas (CNG) Vehicular Fuel Systems: rescind Michigan specific amendments.
- **R-7f** – Storage and Handling of Flammable and Combustible Liquids: rescind Michigan specific amendments.
- **R-7g** – Liquefied Petroleum Gas: rescind Michigan specific amendments.
- **R-7h** – Storage and Handling of Gaseous and Liquefied Hydrogen Systems: rescind Michigan specific amendments.

Recommendation R-7a: Underground Storage Tank [UST] Inspection, Delegation and Certification (COMPLETED)

R 29.2071 through R 29.2077 were rescinded, effective September 10, 2012.

Recommendation R-7b: Part 211-UST Regulations (REFERRED TO LARA)

See above discussion.

Recommendation R-7c: Transportation of Flammable and Combustible Liquids (REFERRED TO LARA)

LARA will initiate rulemaking to rescind R 29.2201 to R 29.2234.

Recommendation R-7d: Compressed Natural Gas (CNG) Vehicular Fuel Systems (REFERRED TO LARA)

See above discussion.

Recommendation R-7e: Production, Storage, and Handling of Liquefied Natural Gas [LNG] (COMPLETED)

R 29.4671 and R 29.4672 were rescinded, effective August 16, 2012.

Recommendation R-7f: Storage and Handling of Flammable and Combustible Liquids (REFERRED TO LARA)

See above discussion.

Recommendation R-7g: Liquefied Petroleum Gas (REFERRED TO LARA)

See above discussion.

Recommendation R-7h: Storage and Handling of Gaseous and Liquefied Hydrogen Systems (REFERRED TO LARA)

See above discussion.

Recommendation R-8: Definition of Background Concentrations for Hazardous Substance in Soil and Groundwater.

Act 446 amended Part 201 by amending the definition of "Background Concentration." A Policy and procedure will be necessary to close this out and is being considered.

Recommendation R-9: Due Care for Indoor Air Inhalation at a Property Subject to MIOSHA Standards. (COMPLETED)

Recommendation R-9 proposes to amend Part 201 so that indoor air inhalation risk at workplaces could be addressed at the option of an owner or operator of property by applying MIOSHA and USEPA workplace exposure criteria for both workers and non-workers in workplaces in lieu of generic Part 201 criteria and without regard to whether or not the extent to which the chemical in question is being used is the workplace.

Act 446 amended Part 201 by allowing facilities subject to the Michigan Occupational Safety and Health Administration (MIOSHA) achieve compliance for indoor air criteria by complying with the MIOSHA standards. Act 446 limits this compliance pathway to only manufacturing facilities.

The stakeholder process included the Deputy Director for MIOSHA and Department of Community Health representatives in developing the statutory language for indoor air inhalation due care considerations. This recommendation is considered completed.

Recommendation R-10: Soil Relocation Statute MCL 324.20120c and Associated Rules

Act 446 amended Part 201 by including provisions and notice requirements for relocating contaminated soil within a facility and from a facility to an offsite location. In addition to clearly defining that only contaminated soils are regulated, the legislation exempts relocated soil from becoming a new facility under Part 201 or a solid waste under Part 115.

A new policy and procedure is being drafted to address this recommendation.

Recommendation R-11: Source Control

The recommendation will require additional discussion with stakeholders and a statutory amendment. See comments under Recommendation R-13.

Recommendation R-12: Relationship between Part 201 and Part 213 (NOT TO BE IMPLEMENTED)

Amendments to Part 213, Leaking Underground Storage Tanks, of the NREPA, became effective on May 1, 2012. The Legislature did not support the combining of Parts 201 and 213 into one statute and one program. Given this, the DEQ will not pursue further action on this item.

Recommendation R-13: Part 201 Due-Care Plans Submitted As Response-Activity Plans for SBA Loans

In many lending scenarios, including the Small Business Administration loans, a person is often required by the lender to obtain the DEQ's approval of an analysis of the Parts 201 and 213 "due care" obligations at the property. Neither Part 201 nor Part 213, contained a mechanism to obtain the approval. Act 446 includes new processes under both Part 201 and Part 213 whereby a person may submit due care documentation to the DEQ for approval.

RRD Policy and Procedure titled, *Time Frame for DEQ Review of Due Care Plan/Report Submitted by SBA Loan Applicants* and identified as [No. RRD-17](#) creates an expedited review of due-care plans.

The CSI stakeholder group has been expanded to include more representation from financial lenders, developers, and the Michigan Municipal League. The goal will be for statutory changes in the fall of 2013.

Recommendation R-14: Boron Standard for Groundwater

Act 446 amended Part 201 by extending the deadline for revision of cleanup criteria rules from December 31, 2012 to December 31, 2013. See comments under Recommendation R-3.

Recommendation R-15: Quality Review Team (COMPLETED)

The RRD's Field Operations Quality Review Team was disbanded in December 2012. It has been replaced with an enhanced District Peer Review Process, wherein the District Supervisor has been given authority to approve all submittals. Ten Technical Support Teams have been enhanced and/ or created within RD to serve as a technical resource to project managers and district staff. A formal [Division Policy and Procedure](#) on both the District Peer Review Team and the Technical Support Teams became effective on September 4, 2012.